

# **ATTACHMENT 13**

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June 29, 2016

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UNITED STATES DISTRICT COURT  
NORTHER DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION  
CISCO SYSTEMS, INC.,  
Plaintiff,  
vs. Civil Action No.  
5:14-cv-5344-BLF  
ARISTA NETWORKS, INC.,  
Defendants.

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HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY  
SUBJECT TO PROTECTIVE ORDER

VIDEO RECORDED DEPOSITION OF EXPERT WILLIAM M. SEIFERT  
JUNE 29, 2016  
9:51 A.M.

50 California Street, 21st Floor  
San Francisco, California

REPORTED BY:  
Mark W. Banta  
CSR No. 6034, CRR

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10:10:27 1 A. Right.

2 Q. Which it sells in conjunction with, for example,  
3 its routers and switches.

4 A. Yes.

10:10:33 5 Q. Okay. You understand that one of those  
6 operating systems is what Cisco refers to as IOS?

7 A. Yes.

8 Q. You understand that IOS has a command line  
9 interface within it?

10:10:42 10 A. Yes.

11 Q. Okay. And do you agree that we can refer to  
12 that command line interface as a CLI?

13 A. Yes.

14 Q. Okay. Can you describe for me your awareness of  
10:10:56 15 any aspect of Cisco's CLI other than what it is alleging  
16 Arista has copied?

17 MS. McCLOSKEY: Objection. Vague. Overbroad.

18 THE WITNESS: Again, I'm not sure what you're  
19 referring to in terms of what does the question mean.

10:11:13 20 BY MR. NEUKOM:

21 Q. Have you ever used Cisco IOS?

22 A. Yes.

23 Q. And you've interacted with the CLI for Cisco,  
24 one or more versions of Cisco's IOS?

10:11:27 25 A. Yes.

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10:11:27 1 Q. For example, you've input commands?

2 A. Yes.

3 Q. Okay. You understand that in this lawsuit Cisco  
4 alleges that Arista copied over 400 multi-word command  
10:11:37 5 expressions?

6 A. Yes.

7 Q. You understand that there are more than just  
8 those 500-plus command expressions that are a part of  
9 Cisco's CLI?

10:11:46 10 A. Yes.

11 Q. Okay. Can you name for me any commands that  
12 you're aware of in Cisco's CLI that Cisco's not alleging  
13 Arista copied?

14 MS. McCLOSKEY: Objection. Vague.

10:12:01 15 THE WITNESS: Well, I think in fact I wasn't  
16 really asked to produce that in my report, so, no, I  
17 don't think I can actually name something that was not  
18 mentioned in the complaint.

19 BY MR. NEUKOM:

10:12:13 20 Q. Okay. Did you use Cisco IOS for purposes of  
21 preparing your report?

22 A. No.

23 Q. When's the last time you've used Cisco -- any  
24 version of Cisco's IOS?

10:12:28 25 MS. McCLOSKEY: Objection. Vague.

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10:13:41 1 A. In part. What is publicly available, yes.

2 Q. Okay. But you haven't actually sat at a  
3 computer or a terminal and used Cisco's IOS software, for  
4 example, to configure or manage a network in I take it as  
10:14:00 5 least three years' time?

6 MS. McCLOSKEY: Objection. Asked and answered.

7 THE WITNESS: No, I have not.

8 BY MR. NEUKOM:

9 Q. Okay. Other than reviewing Cisco's complaint  
10:14:11 10 and reviewing a handful of CCIE training materials, what  
11 steps did you take to familiarize or refamiliarize  
12 yourself with Cisco's CLI for purposes of this report?

13 MS. McCLOSKEY: Objection. Vague.

14 THE WITNESS: Well, I, of course, referred to  
10:14:31 15 Cisco's -- or accessed Cisco's website, online manuals,  
16 printed manuals where they existed, some historical, some  
17 current.

18 BY MR. NEUKOM:

19 Q. And in the course of reviewing, for example,  
10:14:49 20 materials available on Cisco's website, were you able to  
21 identify any aspects of Cisco's CLI that it has not  
22 alleged Arista has copied?

23 MS. McCLOSKEY: Objection. Asked and answered  
24 and vague.

10:15:01 25 THE WITNESS: Again, outside the scope of my



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10:24:25 1 proposed?

2 MS. McCLOSKEY: Objection. Asked and answered

3 and vague.

4 THE WITNESS: No.

10:24:32 5 BY MR. NEUKOM:

6 Q. So for purposes of preparing your expert report

7 which covers, among other issues, a de facto industry

8 standard, you formulated anew this understanding of a

9 de facto industry standard?

10:24:48 10 MS. McCLOSKEY: Objection. Mischaracterizes

11 prior testimony.

12 THE WITNESS: I don't agree that it's a new

13 definition. This is simply my -- my words based on my

14 experience, my involvement with three startup companies

10:25:05 15 that were in fact network equipment manufacturers, and

16 numerous interaction with customers over 30 years of

17 experience in this industry.

18 BY MR. NEUKOM:

19 Q. Before your involvement in this case, had you

10:25:20 20 ever shared with anyone this understanding of a de facto

21 industry standard?

22 MS. McCLOSKEY: Objection. Vague.

23 THE WITNESS: I -- I can't remember if I did or

24 not.

25 //

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11:09:02 1 BY MR. NEUKOM:

2 Q. Okay.

3 A. So when I say a network device being able to  
4 communicate to another, one to another, I'm speaking of  
11:09:10 5 the end systems communicating one to the other.

6 Q. Got it. In paragraph 21 you discussed your  
7 participation in a working group at the IETF?

8 A. Yes.

9 Q. And the working group that you participated in  
11:09:34 10 was called the "Benchmark Working Group." Do I have that  
11 right?

12 A. Yes.

13 Q. Was there -- was it the purpose of that working  
14 group to propose or explore a common command line  
11:09:51 15 interface for the networking industry?

16 MS. McCLOSKEY: Objection. Vague.

17 THE WITNESS: No.

18 BY MR. NEUKOM:

19 Q. If you turn to paragraph 33, it's on page 11, if  
11:10:34 20 that helps. Are you with me?

21 A. Yes.

22 Q. Okay. In paragraph 33 you write:

23 "An industry standard prescribes a set of  
24 product characteristics that are widely adopted  
11:10:51 25 by either all or a significant portion of a

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11:18:41 1 BY MR. NEUKOM:

2 Q. And when you refer to Cisco's implementation of  
3 a CLI, which implementation or implementations do you  
4 have in mind?

11:18:48 5 MS. McCLOSKEY: Objection. Vague. Ambiguous.  
6 Overbroad.

7 THE WITNESS: Again, I can't point to the  
8 version number or even the year, but at some point in the  
9 '90s I would say, in my opinion, is when the Cisco  
10 generic CLI was in fact adopted by other vendors as a  
11 de facto standard.

11:19:06

12 BY MR. NEUKOM:

13 Q. When you refer to "the Cisco generic CLI," can  
14 you explain to me what you mean by that?

11:19:25 15 MS. McCLOSKEY: Objection. Vague.

16 THE WITNESS: Well, just as I said a minute ago,  
17 that the generic CLI meaning their command line interface  
18 as it existed at any given point in time without  
19 referring to a specific version or release number.

11:19:42 20 BY MR. NEUKOM:

21 Q. Okay. So to put it mildly, you have opined that  
22 the 500-plus multi-word command expressions that Cisco is  
23 asserting against Arista for copyright infringement, that  
24 at some point in the past those have become a de facto  
25 industry standard? Do you agree with that statement?

11:20:03



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11:25:43 1 A. Yes.

2 Q. When you wrote "the identified CLI commands,"  
3 you're referring to the 500 plus multi-word command  
4 expressions that Cisco has asserted against Arista for  
11:25:55 5 copyright infringement?

6 A. Again, not putting a number on it, no.

7 Q. Have you formed an opinion one way or another  
8 about whether the identified CLI commands have become  
9 de facto industry standard commands?

11:26:16 10 MS. McCLOSKEY: Objection. Asked and answered.  
11 Vague. Overbroad.

12 THE WITNESS: So let me say this one more time.  
13 To the extent that other vendors have implemented similar  
14 or potentially identical commands, keyword, actions,  
11:26:37 15 responses to Cisco's, I refer to that as an industry  
16 standard CLI, yes.

17 BY MR. NEUKOM:

18 Q. And is it in fact your opinion that the  
19 "identified CLI commands" as we sit here today, that they  
11:26:54 20 have in fact become de facto industry standard commands?

21 MS. McCLOSKEY: Objection. Asked and answered.  
22 I'm not sure how many times you're going to ask the same  
23 question, but it's been a number of times at this point.

24 MR. NEUKOM: As many as it takes to get a  
11:27:06 25 responsive answer.

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11:27:07 1 MS. McCLOSKEY: I think he's responded numerous  
2 times. Asked and answered. Vague. Ambiguous.

3 THE WITNESS: I -- same answer. I'm going to  
4 just say that to the extent other vendors have  
11:27:21 5 implemented the same or similar keywords to Cisco's,  
6 that, to me, is the definition of an industry standard  
7 CLI, yes.

8 BY MR. NEUKOM:

9 Q. So that's the process pursuant to which you  
11:27:31 10 would go about forming an opinion about whether any  
11 particular command expression had become a de facto  
12 industry standard command. Am I hearing you right?

13 A. No, I don't think that's the process.

14 Q. Have you made a determination for any one of the  
11:27:48 15 500-plus command expressions at issue in this case that  
16 they have in fact been adopted by a sufficient number of  
17 other vendors in the marketplace to become a de facto  
18 industry standard?

19 MS. McCLOSKEY: Objection. Asked and answered.  
11:28:03 20 Vague. Ambiguous.

21 THE WITNESS: I'm not sure that I understand  
22 that question. Say that again? Have I an opinion?

23 BY MR. NEUKOM:

24 Q. Yeah. Have you formed an opinion?

11:28:14 25 MS. McCLOSKEY: Same objections.

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11:28:15 1 THE WITNESS: Yes.

2 BY MR. NEUKOM:

3 Q. And for which of the identified CLI commands  
4 have you formed an opinion that they have become at least  
11:28:27 5 by the time we sit here today, that they have become a  
6 de facto industry standard?

7 A. So, again, for purposes of this report, I wasn't  
8 asked and nor did I investigate an exact number or count  
9 how many such command word -- keywords that are on --  
11:28:44 10 that were in dispute were implemented by other vendors.  
11 I, in fact, believe there's another expert in this case  
12 who will testify to that, not me.

13 Q. Okay. So you have not formed or disclosed an  
14 opinion that any of Cisco's asserted command expressions  
11:29:02 15 are, in fact, an industry standard. Do I have that  
16 right?

17 A. No.

18 MS. McCLOSKEY: Objection. Vague. Ambiguous.  
19 Asked and answered.

11:29:10 20 BY MR. NEUKOM:

21 Q. Which of Cisco's command expressions that it's  
22 asserting in this case, for which of those command  
23 expressions have you formed an opinion that they are, in  
24 fact, industry standard commands?

11:29:22 25 MS. McCLOSKEY: Objection. Asked and answered.



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11:31:49 1 Ambiguous.  
2 THE WITNESS: I have not formed an opinion, no.  
3 BY MR. NEUKOM:  
4 Q. Okay. For "the command modes and prompts," that  
11:31:58 5 Cisco is asserting against Arista in this case, I take it  
6 you have not yet formed or disclosed an opinion about  
7 which of those modes or prompts that Cisco's asserting  
8 against Arista, which of those modes or prompts are  
9 versus are not industry standard modes and prompts?

11:32:18 10 A. Again --

11 MS. McCLOSKEY: Object to form. Vague.  
12 Ambiguous.

13 THE WITNESS: Again, I was not asked to identify  
14 which ones. There's another expert who will testify to  
11:32:28 15 which ones are the same or similar, so no, this report  
16 does not address that.

17 BY MR. NEUKOM:

18 Q. Okay. And I take it it's also the case that you  
19 haven't formed an opinion or disclosed an opinion about  
11:32:43 20 which command response elements at issue in this case --

21 MS. McCLOSKEY: Same --

22 BY MR. NEUKOM:

23 Q. -- do versus do not qualify as industry standard  
24 command response elements?

11:32:52 25 MS. McCLOSKEY: Same objections. Object to

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13:56:26 1 cover sheet that says Exhibit C.

2 BY MR. NEUKOM:

3 Q. Okay. If you could please turn to -- well, this  
4 does get confusing, doesn't it?

13:57:08 5 Please turn to -- there's a page which has  
6 nothing on the page except the word "Exhibit D," and the  
7 next page following that begins a large table which has  
8 the header Appendix H.BR. Do you see what I'm referring  
9 to?

13:57:25 10 A. Yes.

11 Q. Okay. And that table that begins on the page  
12 following -- how do you want to refer to this? Should we  
13 call it Exhibit D?

14 A. Sure. That's fine.

13:57:38 15 Q. Okay. Did you prepare the table that's here in  
16 Exhibit D?

17 A. No, I did not.

18 Q. This exhibit was provided to you by counsel?

19 A. Yes.

13:57:51 20 Q. Did you undertake any steps to confirm the  
21 accuracy of the contents of Exhibit D?

22 MS. McCLOSKEY: Objection. Vague.

23 THE WITNESS: Well, as I recall, I did look at

24 Brocade's website and their user guide that's -- or

13:58:10 25 information available there to sort of spot-check a



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13:58:13 1 couple of commands, yes. That's it.

2 BY MR. NEUKOM:

3 Q. Can you tell me for which of these commands you

4 spot-checked?

13:58:20 5 MS. McCLOSKEY: Objection.

6 BY MR. NEUKOM:

7 Q. For accuracy?

8 MS. McCLOSKEY: Objection. Vague.

9 THE WITNESS: No, I can't really tell you which

13:58:24 10 ones. I just remember doing a few, not exhaustively.

11 BY MR. NEUKOM:

12 Q. Okay. Three? Five?

13 MS. McCLOSKEY: Objection. The witness has

14 already testified that he doesn't remember. He remembers

13:58:33 15 doing a few.

16 THE WITNESS: You know, a handful. That's all I

17 can characterize it as.

18 BY MR. NEUKOM:

19 Q. For the rest of them, for the contents of

13:58:43 20 Exhibit D, you trusted counsel to have collected and

21 represented this information accurately?

22 MS. McCLOSKEY: Objection. Vague.

23 THE WITNESS: Yes, I did.

24 BY MR. NEUKOM:

13:58:58 25 Q. Exhibit E. And again, this is a little

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13:59:01 1 confusing because it looks like the first substantive  
2 page of Exhibit E has the header Appendix H.DE, but I'm  
3 willing to call it Exhibit E if you are.

4 A. Sure.

13:59:14 5 Q. Okay.

6 A. Fine.

7 Q. You didn't prepare Exhibit E?

8 MS. McCLOSKEY: Objection.

9 THE WITNESS: No.

13:59:20 10 MS. McCLOSKEY: Vague.

11 BY MR. NEUKOM:

12 Q. Exhibit E was prepared -- was provided to you by  
13 Arista's counsel in this case?

14 A. Yes.

13:59:30 15 Q. Did you review any materials to confirm or to  
16 verify the accuracy of what's represented here in Exhibit  
17 E?

18 MS. McCLOSKEY: Objection. Vague.

19 THE WITNESS: I did view a Dell-supplied

13:59:47 20 You Tube video which has a side-by-side comparison of a  
21 number of configuration commands, so again, to the extent  
22 that that validates, I don't know, some number.

23 BY MR. NEUKOM:

24 Q. Sure.

13:59:57 25 A. 10 or fewer perhaps.

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1 STATE OF CALIFORNIA

2 COUNTY OF SAN FRANCISCO

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4 I, MARK W. BANTA, a Certified Shorthand  
5 Reporter, do hereby certify:

6 That prior to being examined, the witness in  
7 the foregoing proceedings was by me duly affirmed to  
8 testify to the truth, the whole truth, and nothing but  
9 the truth;

10 That said proceedings were taken before me at  
11 the time and place therein set forth and were taken down  
12 by me in shorthand and thereafter transcribed into  
13 typewriting under my direction and supervision;

14 I further certify that I am neither counsel  
15 for, nor related to, any party to said proceedings, nor  
16 in any way interested in the outcome thereof.

17 In witness whereof, I have hereunto subscribed  
18 my name.

19 Dated: July 1, 2016

20

21

22

23



24 MARK W. BANTA

25 CSR 6034, CRR